

EXHIBIT 4

CONFIDENTIAL – CONTAINS MATERIALS DESIGNATED AS HIGHLY
CONFIDENTIAL PER PROTECTIVE ORDER

Expert Report of Jonathan B. Baker

Texas et al. v. Penguin Group (USA) Inc. et al., No. 12-cv-03394(DLC)

February 8, 2013

Assignment and Summary of Conclusions

1. Thirty-three states and territories have charged that five book publishers (Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster, collectively termed the “defendant publishers”) and Apple conspired to raise the retail prices of electronic books (ebooks), in violation of the federal antitrust laws and a number of state statutes prohibiting unfair competition.¹ Retail prices for ebooks increased pursuant to the challenged agreement starting in April 2010, according to the states’ complaint. Three publishers have reached settlements with the states.
2. I was asked to analyze the economic plausibility of coordinated conduct among the defendant publishers and Apple consistent with the states’ claims. I was also asked to provide an economic analysis of the harm to consumers arising from that conduct.
3. A summary of my conclusions is set forth below:
 - a. The defendant publishers likely acted in a coordinated way to obtain the ability to set retail prices of trade ebooks sold in the United States (U.S.) at retail outlets, particularly Amazon’s, thereby facilitating retail ebook price increases.
 - b. The defendant publishers also likely coordinated in setting retail ebook prices once they obtained the authority to do so, and selected retail prices for trade ebooks sold in the U.S. above the levels that would likely otherwise have prevailed.
 - c. Coordinated conduct likely was facilitated by the ebook distribution agreements that the defendant publishers entered into with Apple in connection with the launch of Apple’s iBookstore.
 - d. Consumers were harmed by the increase in retail prices, averaging approximately 19% for the books sold by defendant publishers, that likely resulted from coordinated conduct.

¹ Second Amended Complaint for Injunctive Relief, Civil Penalties & as Parens Patriae on behalf of Consumers, May 17, 2012 (Case 1:12-cv-03394-DLC).